



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR, FFT, MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Tenants' application for:

- Return of security deposit that Landlords are retaining without cause.
- Reimbursement of the filing fee.

And the Landlords' application for:

- To recover money for unpaid rent.
- Compensation for damage caused by the Tenants, their pets or guests to the rental unit.
- Compensation for monetary loss or other money owed.
- Reimbursement of the filing fee.

The Landlords testified that they were served with the Dispute Resolution Proceeding Package (Proceeding Package) and documentary evidence. I find the Landlords were served with the required materials in accordance with the Act. The Landlords did not submit any evidence in response to the Tenants application.

I am not satisfied with the service of the Landlords' Proceeding Package to the Tenants.

Section 59(3) of the Act and Residential Tenancy Branch (RTB) Rule of Procedure 3.1 both require that an applicant serve the respondent with these documents within three days of receiving the aforementioned proceeding package from the RTB.

The Landlords did not do this within the required timeframe, or at all. As such, the Tenants have not been provided notice that the Landlords' application would be heard at this hearing, and it would be unfair to proceed with the hearing.

I dismiss the Landlords' application with leave to reapply, due to service issues described above.

The Tenants' application details contain a claim for a monetary order, return of the security deposit and reimbursement of the filing fee. Of these claims, the Tenant filed for

return of the security deposit and did not amend their application to add further monetary claims. The hearing focused on the return of the security deposit.

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. I dismiss the Tenants' request for compensation with leave to reapply.

Issue(s) to be Decided

- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on March 1, 2022, with a monthly rent of \$4,600.00 to be paid every three months in a lump sum payment of \$13,800.00. The tenancy ended on February 1, 2023.

The Tenants' advocate YC testified that the Tenants paid in cash a security deposit of \$4,000.00 on February 28, 2022. YC stated that an additional \$600.00 was paid later which resulted in the total security deposit payment of \$4,600.00.

YC stated that the Landlords confirmed receiving a security deposit of \$4,000.00 in a letter dated February 28, 2022. The Tenants filed the letter, which is written in Chinese, as part of their documentary evidence. The Tenants also filed a translated version of the document, as prepared by a Certified Translator.

The Tenant filed bank statements showing withdrawal of rent from March 2022 to November 2022. Further, the March 2022 withdrawal shows the total withdrawal of \$14,400.00 (rent in the amount of \$13,800.00, plus additional \$600.00 for the remainder of the security deposit).

YC stated that on February 22, 2023, Tenant MC sent a letter to the Landlords, in which MC provided their written forwarding address and requested the return of the security deposit (\$4,600.00). The Tenants filed the letter as part of their documentary evidence.

The Landlords' advocate JL stated that the Tenant paid \$4,000.00 on February 28, 2022, however, this was not a security deposit but rather a house viewing deposit. JL

stated that the Landlords applied the \$4,000.00 as a credit towards the first three months of rent, as negotiated with the Tenants. JL stated that in March 2022 the Tenant was only required to pay additional rent in the amount of \$9,800.00.

YC stated that the Tenants were not aware of any house viewing fee.

JL stated that the translated letter filed by the Tenants is inaccurate, as different words have different characters in Chinese, and there is no literal translation for security deposit, hence the letter fails to note it as a house viewing deposit. JL stated the Landlords did not ask for a security deposit payment as the agreement was for a short tenancy, for a six-month period.

Analysis

- Is the Tenant entitled to the return of the security deposit?

Section 38(4) allows a landlord to retain from a security if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security deposit or make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit.

Based on the evidence before me, I am satisfied the Tenants paid a security deposit in the amount of \$4,600.00. I accept the documentary evidence of the letter from the Certified Translator and the bank withdrawal statements that support a security deposit payment in the total amount of \$4,600.00. Although the Landlords do not agree with the security deposit payment, I find it more like than not that the Tenants paid a security deposit versus house viewing fee. The documentary evidence supports the same.

Further, I find the Landlords received the Tenants' forwarding address on February 22, 2023. I find the Landlords did not have the Tenants' agreement in writing to keep the security deposit. Further, I find the Landlords did not apply for dispute resolution within 15 days of receiving the Tenants' forwarding address or of the tenancy ending, to retain a portion of the security as required under section 38(1).

Under section 38(6) of the Act, I find that the Landlords must pay the Tenants double the amount of the deposit as they have not complied with section 38(1) of the Act.

Therefore, I find the Tenants are entitled to a Monetary Order of \$9,265.78, representing an amount equal to double the security deposit, under sections 38 and 67 of the Act, plus interest. The \$4,600.00 deposit accrued \$65.78 in interest.

Nothing in this decision prevents the Landlords from making an application for compensation due to the breach of the Act by the Tenants, including for damage to the rental unit. However, the Landlords will no longer be able to claim against the deposit, as I have ordered that they be returned.

- Are the Tenants entitled to recover the filing fee?

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$9,365.78** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for the return of all of their security deposit and pet damage deposit under sections 38 and 67 of the Act, plus interest.	\$9,265.78
Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.	\$100.00
Total Amount	\$9,365.78

The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 26, 2023

Residential Tenancy Branch